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# ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel

EXTENSION

NO.

DATE

17 July 1975

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

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Gen Wilson

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Attached are OLC suggestions for comment on Murphy Commission recommendations 169, 173, 180, 181 and 182. Previously we had submitted suggestions on recommendations 51 and 55b.

STAT

George B. Cary  
Legislative Counsel

Attachments

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Recommendation 169 on Executive Agreements

The rationale underlying this recommendation relates to those matters for which the Congress shares constitutional responsibility. The Commission recognizes that in the future, as in the past, the Executive Branch must conduct United States relations with other countries and that the President in fulfilling his constitutional responsibilities must have the flexibility to meet international demands of increasing complexity. It is believed that liaison agreements with foreign services for intelligence purposes is an executive function outside of the scope of the constitutional responsibility of the Congress. A pre-condition of such agreements is a commitment of confidentiality.

The underlying quid pro quo to support such arrangements does not appear to constitute a "national commitment" as contemplated by the recommendation. However, the definition of "national commitment" (to assist a foreign government by use of financial resources of the United States) could be construed to apply to such intelligence liaison agreements. If so construed, the requirement of public action (treaty, statute or resolution) could not be accommodated without violating the underlying pre-condition of confidentiality. Such ambiguity in language could be clarified in the associated legislative history of the proposed concurrent resolution concerning "national commitments."

Recommendation 173 on a Classification System Based on Statute

I concur with this recommendation which, in proposing mandatory classification for information relating principally to sources and methods of intelligence, would reinforce the Director's existing statutory responsibility as set forth in the National Security Act of 1947, to protect intelligence sources and methods from unauthorized disclosure. (It is recommended that the term intelligence sources and methods be defined along the lines of the attached.)

However, the downgrading and declassification of information which is "born classified" by statute, should be determined by the Federal officer responsible for implementing the mandatory statutory classification and not by an automatic downgrading and declassification system.

The application of criminal penalties to the unauthorized release of such information is strongly endorsed. However, the legal process applied to resolving questions arising out of such mandatory statutory classification should provide only for an in camera court review against an arbitrary and capricious standard. This would assure that the responsibility lodged by statute for determining the classification in the first instance is not transferred to the Judiciary.

5                   (2) For the purposes of this subsection, the  
6 term "information relating to intelligence sources and  
7 methods" means sensitive information concerning--

8                   (A) methods of collecting foreign  
9 intelligence;

10                   (B) sources of foreign intelligence,  
11 whether human, technical, or other; or

12                   (C) methods and techniques of analysis  
13 and evaluation of foreign intelligence which,  
14 in the interests of the security of the foreign  
15 intelligence activities of the United States, has  
16 been specifically designated for limited or restricted  
17 dissemination or distribution, pursuant to authority  
18 granted by law or Directive of the National Security  
19 Council, by a department or agency of the United  
20 States Government which is expressly authorized by  
21 law or by the President to engage in intelligence  
22 activities for the United States;

Recommendation 180 on the Establishment of a Joint Committee  
on National Security Which Will Assume Congressional  
Oversight of the Intelligence Community

The manner in which Congress organizes itself to conduct congressional oversight of the intelligence community is essentially a matter for the Congress to decide. However, as you know, I am concerned over the proliferation of sensitive intelligence information. The Commission, by stipulating that the proposed joint committee would not substitute for the regular legislative and investigative functions of the present standing committees in each House, would add an additional committee without resolving the central issue--to reverse the present trend of proliferating sensitive information. The need is to establish a single small select joint committee with a clearly defined role to include a review of covert action programs and with exclusive authority of access to sensitive information involving the sources and methods of intelligence. It would seem appropriate that oversight of Agency management, functions and operations be limited to such a committee and to such appropriations subcommittees as may be necessary to consider and oversee the Agency's budget.

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Recommendation 181 on the Jurisdiction and Authority of the

Joint Committee to Receive and Review  
the Analytical Products of the Intelligence Community

I concur in this recommendation but defer to the National Security Council, the current statutory recipient of these products, on the possible impact of this recommendation on Executive Branch policy formulation and execution.

Recommendation 182 on Granting Authority to the Joint Committee  
for Annual Authorization of Funds for the Intelligence Community

In the past I have taken the position that questions such as these should be resolved by the Congress. However, I cannot in good conscience concur in such a recommendation. The recommendation contemplates an annual authorization to appropriate funds for the activities of CIA, a requirement which does not now exist under current law (Central Intelligence Agency Act of 1949). Such new annual authorization requirement carries with it the same security problems of an open budget for the CIA.

I firmly believe that the CIA budget and certain classified intelligence programs of the Department of Defense should remain fully classified and non-identifiable. The requirement of annual authorization for the intelligence community requires hearings before oversight committees to explain the budget (which is presently done and which is a procedure I support) with the added requirement of moving an authorization bill through the entire legislative process. The resulting public disclosure could provide potential enemies with considerable insight into the nature and extent of our activities. Even a single figure in an authorization bill, without further revelation, could result in questions and discussions of any changes or trends developed in succeeding year figures and generate a demand for explanations eroding necessary secrecy.